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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/749,547	01/02/2004	Concetta Lombardo	23745.00	8755

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EXAMINER

SANTOS, ROBERT G

ART UNIT	PAPER NUMBER
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3673

DATE MAILED: 11/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/749,547

Applicant(s)

LOMBARDO ET AL.

Examiner

Robert G. Santos

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 13 August 2004.  
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☒ Claim(s) 19 and 20 is/are allowed.  
6) ☒ Claim(s) 1-3, 5, 8-10, 15 and 17 is/are rejected.  
7) ☒ Claim(s) 4, 6, 7, 11-14, 16 and 18 is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.  
4) ☒ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. 08112004.  
5) ☐ Notice of Informal Patent Application (PTO-152)  
6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-3, 5, 8 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chalk '571 in view of Lopes '219. As concerns claims 1-3, 5 and 10, Chalk '571 lacks the use of at least one rectangular stuffed pillow movably coupled to a corner of the towel (10) by hook and loop fastening adjacent the aperture. Lopes '219 provides the basic teaching of a towel (12) provided with at least one rectangular stuffed pillow (52) attached in a corner thereof by hook and loop fastening (54, 56). The skilled artisan would have found it obvious at the time the invention was made to provide the towel of Chalk '571 with at least one rectangular stuffed pillow movably coupled to a corner of the towel by hook and loop fastening adjacent the aperture in order to provide enhanced user comfort.

With regards to claims 8 and with further regards to claim 10, Chalk '571, as modified by Lopes '219, does not specifically disclose a condition wherein the stuffed pillow is circular or arcuate in shape. The skilled artisan would have also found it obvious to provide the towel of Chalk '571, as modified by Lopes '219, with a circular or arcuate stuffed pillow, since such a modification would have been generally recognized as being within the level of ordinary skill in the art.

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3. Claims 9, 15 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chalk '571 in view of Lopes '219, and further in view of Roper, III '850. With regards to claims 9 and 17, Chalk '571 as modified by Lopes '219 does not specifically disclose the use of an aperture located along one edge or corner of the towel or the use of a second aperture. Roper, III '850 provides the basic teaching of a support device (10) provided with a plurality of apertures (16, 16', 16'') located proximate edges and corners thereof. The skilled artisan would have found it obvious at the time the invention was made to provide the towel of Chalk '571, as modified by Lopes '219, with an aperture located along one edge or corner of the towel or the use of a second aperture in order to allow greater selection "for positioning the umbrella relative to the [towel]" (see Roper, III '850, Figure 7 and column 4, lines 9-12).

As concerns claim 15 and with further regards to claim 17, Chalk '571, as modified by Lopes '219 and as further modified by Roper, III '850, does not specifically disclose the use of at least one stuffed pillow which is arcuate or circular in shape. The skilled artisan would have found it obvious to replace the rectangular stuffed pillow of Chalk '571, as modified by Lopes '219 and as further modified by Roper, III '850, with at least one stuffed pillow which is arcuate or circular in shape since such a modification would have been generally recognized as being within the level of ordinary skill in the art.

### ***Response to Amendment***

In response to Applicants' arguments on pages 8 and 10 of their amendment stating that there is no suggestion to combine the Chalk '571 and Lopes '219 references, the examiner recognizes that references cannot be arbitrarily combined and that there must be some reason

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why one skilled in the art would be motivated to make the proposed combination of primary and secondary references. *In re Nomiya*, 184 USPQ 607 (CCPA 1975). However, there is no requirement that a motivation to make the modification be expressly articulated. The test for combining references is what the combination of disclosures taken as a whole would suggest to one of ordinary skill in the art. *In re McLaughlin*, 170 USPQ 209 (CCPA 1971). References are evaluated by what they suggest to one versed in the art, rather than by their specific disclosures. *In re Bozek*, 163 USPQ 545 (CCPA 1969). In this case, although the motivations to make the modifications which were stated in the Office action were not expressly articulated within the references, one of ordinary skill in the art would have still found it obvious to combine the references simply due to the advantageous effects achieved by combining the structural elements inherent to the devices disclosed in the references. Thus it is believed that the examiner has provided a *prima facie* case of obviousness absent the use of impermissible hindsight. Moreover, in response to Applicants' arguments on pages 8 and 9 of their amendment concerning the Schwarz et al. '667 reference, the examiner respectfully agrees. Consequently, the claim rejections under Schwarz et al. '667 have been respectfully withdrawn.

#### ***Allowable Subject Matter***

4. Claims 4, 6, 7, 11-14, 16 and 18 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The examiner respectfully asserts that one of ordinary skill in the art would not have found it obvious to modify the beach umbrella towel of Chalk '571 as modified by Lopes '219 to include attachment means which is sewing as recited in

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claim 4, or to include the particular structural configurations of respective pluralities of stuffed pillows of various shapes equidistantly spaced from the aperture as recited in claims 6, 7, 11-14, 16 and 18.

5. Claims 19 and 20 are allowed. The examiner respectfully asserts that one of ordinary skill in the art would not have found it obvious to modify the beach umbrella towel of Chalk '571 as modified by Lopes '219 to include the particular structural configuration of respective pluralities of stuffed arcuate pillows equidistantly spaced from a pair of apertures as recited in these claims.

***Conclusion***

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

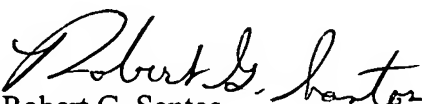
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert G. Santos whose telephone number is (703) 308-7469. The examiner can normally be reached on Tues-Fr and first Mondays, 10:30 a.m. to 8:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Heather C. Shackelford can be reached on (703) 308-2978. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Robert G. Santos  
Primary Examiner  
Art Unit 3673

R.S.  
October 27, 2004